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UNCLAS SECTION 01 OF 02 KIEV 000398

SIPDIS

DEPT FOR G/TIP, INL/AAE, EUR/UMB, AID, L/LEI  
JUSTICE FOR OIA, AFMLS, NDDS AND OPDAT

E.O. 12958: N/A

TAGS: [PHUM](#) [PGOV](#) [KCRM](#) [SMIG](#) [KFRD](#) [PREF](#) [ELAB](#) [KWMN](#) [UP](#)

SUBJECT: Ukraine: Prosecutors Weak Link in Combating TIP

1. Summary. In trafficking in persons (TIP) criminal cases, prosecutors are the weak link in the law enforcement chain due to the negative stereotypes many prosecutors hold of TIP victims, a lack of aggressive prosecution for fear of losing a case, and the difficulty in obtaining evidence in timely manner from abroad. Embassy is urging the General Prosecutor's Office (GPO) to establish a TIP Division, is working with it to create a TIP training program at the Prosecutor's Academy, and is supporting its efforts to develop more flexible arrangements for obtaining evidence for TIP cases from GPOs in neighboring countries. End summary.

PROSECUTORS: WRONG ATTITUDE PLUS NO INCENTIVE  
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2. In 2005, the GPO, in response to an Embassy demarche, made TIP one of its five priority crimes. However, to date, this step appears to have had limited impact on the practice of prosecutors who for the most part continue to harbor negative stereotypes of TIP victims. At a recent seminar in Kharkiv, a prosecutor from Sumy told us that many victims willingly went abroad as prostitutes and thus they were not really victims and should be treated accordingly. This common view among prosecutors reflects a view widely held by the public writ large. Senior GOU officials and popular cultural icons like the pop-singer Svyatoslav Vakarchuk have started to try to change this negative stereotype through public statements and information spots.

3. Prosecutors' inadequate handling of TIP cases has come under criticism from judges. For example, Supreme Court Judge Strekalov stated that his analysis of TIP cases revealed that prosecutors tended to undercharge the accused in TIP cases and rarely appealed light sentences. The reason, prosecutors have told us, is that they fear that they will lose a case and as a result be subject to disciplinary action. The methodology for rating performance in Ukraine is a carryover from the Soviet-era when high volume statistics and 100% success rates were expected as the norm. This serves as a disincentive for a prosecutor to take on a complicated case or go after a maximum conviction, as does the limited two-month time frame s/he has to build the case.

4. Judge Strekalov's research also revealed that rarely do prosecutors support victims' civil suits for damage compensation. When confronted with this latter fact, prosecutors complained to us that they did not have enough staff to cover the issue and would gladly welcome an increase in staffing. Currently, in each of the 27 regional prosecutor's offices, each comprised with a court department and an investigation oversight department, a person in the latter department has TIP responsibilities among his or her portfolio. Some of these individuals, but not all, have the right to represent cases in court.

SOLUTION: TRAINING, TIP DIVISION, AND ACCESS TO EVIDENCE  
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5. Embassy has devised a multi-track approach to addressing these challenges. On January 23, the Resident Legal Advisor (RLA) launched, in partnership with the Prosecutor's Academy, a one-year TIP training program with the goal of creating a permanent curriculum for the Academy. RLA is also currently reviewing the new training programs of the International Organization for Migration (IOM) and OSCE to assess their value and see if there are possibilities for a distribution of labor. Embassy has also been engaged in discussions with the Deputy Prosecutor General on the creation within the GPO of a dedicated TIP Division, similar to the Department for Combating TIP that was established in the Ministry of Interior in 2005. In principle an agreement exists, but a six-month political battle over who legally is the Prosecutor General has delayed any final detailed discussions on what would be the most effective structure. On January 30, Ambassador handed to President Yushchenko's chief of staff a letter urging the President to quickly sign into law legislation passed January 12 by the Parliament harmonizing Ukraine's Criminal Code with the TIP provisions of the UN Palermo Convention and to support the establishment of a TIP Division within

the GPO.

16. The GPO realizes that in combating TIP, a transnational crime, there is a need to simplify implementation of requests for mutual legal assistance (MLA) between neighboring countries. With Poland, the GPO has already negotiated an agreement where regional prosecutors can send MLA requests directly to their counterparts in Poland and vice versa; i.e., not have to pass it through the national headquarters. The GPO is currently negotiating similar arrangements with the Slovak Republic and Hungary. At the same time, the RLA has reached out to her U.S. counterparts in Chisinau and Bucharest to facilitate Ukraine joining Moldova and Romania in signing a trilateral agreement between the GPOs of the three countries to cooperate on transnational organized crime, including TIP.

Herbst